

MEMORANDUM ENDORSED



SBAITI & COMPANY
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August 19, 2022

Via E-File

Honorable Gregory H. Woods
U.S. District Judge
Southern District of New York
500 Pearl Street
Room 2260
New York, NY 10007

**Re: *NexPoint Diversified Real Estate Trust v. Acis Capital Management, L.P., et al*,
Cause No. 1:21-cv-04384-GHW, U.S. District Court, Southern District of New York**

To the Honorable Judge Woods:

We write on behalf of the Plaintiff NexPoint Diversified Real Estate Trust to advise the Court, per its opinion granting Defendants' motions to dismiss, on what Plaintiff believes is the most efficient and expedient process for resolving the issues in the Court's Order. *See* Dkt. No. 120 ("Mem. Op. & Order").

After reviewing the Court's Mem. Op. & Order on Plaintiff's federal claims and the claims against U.S. Bank N.A., and although Plaintiff respectfully disagrees with the Court's decision, Plaintiff respectfully requests that the Court (i) enter an order per the Court's Mem. Op. & Order dismissing with prejudice the claims against U.S. Bank N.A., and the federal claim under the Investment Advisers Act against Defendants Acis Capital Management, L.P., Brigade Capital Management, L.P., and Joshua Terry,¹ (ii) dismiss without prejudice any state law claims against Defendants Acis Capital Management, L.P., Brigade Capital Management, L.P., and Joshua

¹ By yielding to the Court's determination that these claims should be dismissed with prejudice, as opposed to attempting to amend or seek reconsideration, Plaintiff does not thereby intend to waive any right to appeal the dismissal of any claim with prejudice.

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Terry,² and (iii) order as it suggested in the Mem. Op. & Order that each party is to bear its own cost of suit.

Respectfully submitted,

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

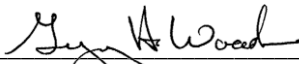
Counsel for Plaintiff

Application granted. In its August 9, 2022 opinion, the Court gave Plaintiff leave to amend its state law claims against U.S. Bank (over which the Court exercised its jurisdiction pursuant to the Edge Act). Dkt. No. 120 at 18. Plaintiff has declined the opportunity to amend those claims. Accordingly, all claims against U.S. Bank are dismissed with prejudice. Plaintiff's federal claims against defendants Acis Capital Management, L.P., Brigade Capital Management, L.P., and Joshua Terry are dismissed with prejudice. For the reasons stated in the August 9, 2022, the Court declines to exercise supplemental jurisdiction over Plaintiff's state law claims against defendants Acis Capital Management, L.P., Brigade Capital Management, L.P., and Joshua Terry. Those claims are dismissed without prejudice. Each party is directed to bear its own costs.

The Clerk of Court is directed to enter judgment in favor of Defendants and to close this case.

SO ORDERED.

Dated: August 19, 2022
New York, New York



GREGORY H. WOODS
United States District Judge

² While the Mem. Op. & Order states that the Court intends to decline supplemental jurisdiction over, and “remand” the state law claims, we humbly point out that “federal tribunals lack authority to remand to the state court system an action initiated in federal court.” *Levin v. Com. Energy, Inc.*, 560 U.S. 413, 428 (2010). This case was commenced in this Court (it was not removed), and therefore, dismissal without prejudice of the state law claims that this Court has elected not to exercise supplemental jurisdiction over is appropriate. *See Cohen v. Walcott*, No. 13-cv-9181, 2017 U.S. Dist. LEXIS 97500, at *13–14 (S.D.N.Y., June 23, 2017).